

1  
2  
3  
4 SURGICAL INSTRUMENT SERVICE  
5 COMPANY, INC., et al.,  
6 Plaintiffs,  
7 v.  
8 INTUITIVE SURGICAL, INC.,  
9 Defendant.

10 Case No. 21-cv-03496-AMO  
11

12  
13 **ORDER FOLLOWING JURY CHARGE  
14 CONFERENCE**

15 During the conference discussing the Court's Tentative Jury Charge, counsel for Plaintiff  
16 Surgical Instrument Service Company, Inc. ("SIS") objected to the Court's proposed instruction  
17 regarding single-brand aftermarket. *See ECF 437 at 23.* The Court declined to remove the  
18 instruction at the conference, indicating that a plaintiff seeking to establish a single-brand  
19 aftermarket needs to satisfy the four-part test from *Epic Games, Inc. v. Apple, Inc.*, 67 F.4th 946,  
20 977 (9th Cir. 2023). However, based on counsel's argument and the evidence presented in this  
21 case, SIS does not contend that Defendant Intuitive Surgical, Inc. ("Intuitive") lacks market power  
22 in the purported market of minimally-invasive soft tissue robots and that Intuitive's customers are  
23 "locked-in" to an alleged single-brand aftermarket of replacement and repaired EndoWrist  
24 instruments. *See Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 464-66, 476-78  
25 (1992); *Newcal Indus., Inc. v. Ikon Off. Sol.*, 513 F.3d 1038, 1051-52 (9th Cir. 2008). To the  
26 contrary, SIS asserts that Intuitive has market power in the purported market of minimally-  
27 invasive soft tissue robots. *See Eastman Kodak*, 504 U.S. at 464-66. In light of this theory of the  
28 case, the Court finds the proposed jury instruction requiring SIS to prove the *Epic v. Apple* factors  
unnecessary. The Court will accordingly not provide that instruction to the jury.

1       Intuitive requested edits to the proposed instructions on pages 20 and 46 of the Tentative  
2 Jury Charge stating that consideration of the Section 2 claim is limited to evidence presented in  
3 support of SIS's Section 1 tying and exclusive dealing claims. That is not an accurate statement of  
4 the law, and the Court declines Intuitive's proposed edits accordingly.

5       During the conference, Intuitive requested an additional jury instruction about evidence  
6 regarding design changes to X and Xi model Endowrists. Reviewing it as a stand-alone  
7 instruction, the Court proposed some edits to Intuitive's proposal and indicated that it would be  
8 included among the final instructions. Upon further reflection, and in trying to work the design  
9 instruction into the jury charge, the Court concludes that it will ultimately be more confusing than  
10 helpful to the jury to instruct them about the consideration of design evidence. Thus, it will not be  
11 included.

12

13

**IT IS SO ORDERED.**

14

Dated: January 27, 2025

15

16

17

18

19

20

21

22

23

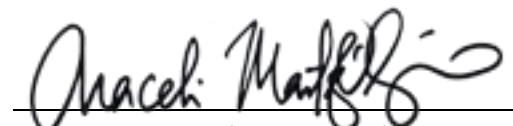
24

25

26

27

28



ARACELI MARTÍNEZ-OLGUÍN  
United States District Judge